

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 27

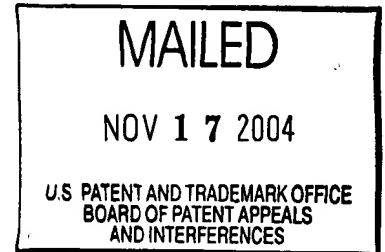
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID L. SALGADO, RUSS R. ROBERTS,
DENNIS ULRICH and GARY R. KERN

Appeal No. 2004-2010
Application 09/448,804

ON BRIEF



Before BARRETT, SAADAT, and MACDONALD, Administrative Patent Judges.

MACDONALD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-14.

Invention

Appellants' invention relates to a multiple platform architecture data reporting system for managing attribute data. The system comprising: a system manager for collecting attribute

data from multiple platforms; and a user interface connected to the system manager for displaying the collected attribute data to a user. Appellants' specification at page 2, lines 16-21.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A multiple platform architecture data reporting system for managing attribute data, the system comprising:

a system manager for collecting attribute data from multiple platforms; and

a user interface connected to the system manager for displaying the collected attribute data to a user.

References

The references relied on by the Examiner are as follows:

Menezes et al. (Menezes)	5,621,894	Apr. 15, 1997
Nakagawa et al. (Nakagawa)	5,835,911	Nov. 10, 1998
Misra et al. (Misra)	6,189,146	Feb. 13, 2001
		(filed March. 18, 1998)

The reference relied on by the Board is as follows:

Ikeda	5,822,532	Oct. 13, 1998
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Rejections At Issue

Claims 1-2 and 12-14 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Misra and Nakagawa.

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Claims 3-11 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Misra and Nakagawa and Menezes.

Throughout our opinion, we make references to the Appellants' briefs, and to the Examiner's Answer for the respective details thereof.¹

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 1-14 under 35 U.S.C. § 103.

We also use our authority under 37 CFR § 41.50(b) to enter a new grounds of rejection of claim 1. The basis for this is set forth in detail below.

Appellants have indicated that for purposes of this appeal the claims stand or fall together in four groupings. See page 5 of the brief. However, Appellants have not met the requirements of 37 CFR § 1.192 (c)(7) (July 1, 2002) as amended at 62 Fed.

¹ Appellants filed an appeal brief on January 26, 2004 fully replacing the appeal brief filed on March 10, 2003. The Examiner mailed out an Examiner's Answer on March 10, 2004.

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Reg. 53169 (October 10, 1997), which was controlling at the time of Appellants' filing of the brief. 37 CFR § 1.192 (c)(7) states:

Grouping of claims. For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Appellants have included the same claim in multiple groups and have not presented arguments directed to each grouping. We will, therefore, consider Appellants' claims as standing or falling together in the two groups noted below:

Claims 1-2 and 12-14 as Group I; and

Claims 3-11 as Group II.

We will treat:

Claim 1 as a representative claim of Group I; and

Claim 3 as a representative claim of Group II.

If the brief fails to meet either requirement, the Board is free to select a single claim from each group and to decide the appeal of that rejection based solely on the selected representative

claim. In re McDaniel, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002). See also In re Watts, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004).

I. Whether the Rejection of Claims 1-2 and 12-14 Under 35 U.S.C. § 103 is proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 1-2 and 12-14. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). See also In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming

forward with evidence or argument shift to the Appellants. *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. See also *Piasecki*, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to independent claim 1, Appellants argue at page 9 of the brief, "Misra does not poll or collect attribute data **from** the client." (Emphasis added) To determine whether claim 1 is obvious over the references, we must first determine the scope of the claim.

Our reviewing court states in *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow." Our reviewing court further states, "[t]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have

the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." **Texas Digital Sys. Inc v. Telegenix Inc.**, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002), **cert. denied**, 538 U.S. 1058 (2003).

Upon our review of Appellants' specification, we fail to find any definition of the term "from" that is different from the ordinary meaning. We find the ordinary meaning of the term "from" is best found in the dictionary. We note that the definition most suitable for "from" is "used to indicate a source".² We find the claim language requires that the clients or "multiple platforms" be the source of the attribute data.

Now, the question before us is, what would Misra have taught to one having ordinary skill in the art? To answer this question we find the following facts:

1. Misra at figure 3, items 108 and 112, teaches that attribute data flows from the license generator 26 to license store 114.
2. Misra at figure 4, items 106 and 108, teaches that attribute data also flows from the license server 28 to license pack 108.

²The American Heritage Dictionary, Second College Edition, 1982, page 536. Copy provided to Appellants.

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Based on 1 and 2 above, we find that while Misra does teach attribute data collection, Misra does not teach that the source of the attribute data is "multiple platforms."

Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103.

**II. Whether the Rejection of Claims 3-11 Under
35 U.S.C. § 103 is proper?**

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 3-11. Accordingly, we reverse.

With respect to independent claim 3, we note that the Examiner has relied on the Menezes reference solely to teach "polling" [answer, page 6]. The Menezes reference in combination with the Misra and Nakagawa patents fails to cure the deficiencies of Misra and Nakagawa noted above with respect to claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

III. Rejection of Claim 1 Under 37 CFR § 41.50(b) .

We make the following new grounds of rejection using our authority under 37 CFR § 41.50(b) . Claims 1 is rejected under 35 U.S.C. 102 as being unpatentable over Ikeda U.S. Patent 5,822,532.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. **See In re King**, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and **Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.**, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984) .

We find that Ikeda teaches the following features:

1. Column 1, lines 53-57 and figure 4, teach a system manager (network resource supervising system) for collecting attribute data from multiple platforms including by inquiring of the resources about their present state (step S44 of figure 4) .
2. Column 3, line 57, through column 4, line 3, and figure 2, teach a user interface connected to the system manager for displaying the collected attribute data (in graphical form) to a user.

Ikeda teaches all of the limitations of claim 1 at 1-2 above. Therefore, we reject claim 1 under 35 U.S.C. 102 as being anticipated by Ikeda (U.S. Patent 5,822,532).

Other Issues

The Board of Patent Appeals and Interferences is a review body, rather than a place of initial examination. We have made a rejection above under 37 CFR § 41.50(b). However, we have not reviewed claims 2-14 to determine whether these claims are patentable over the Ikeda patent. We leave it to the instant Examiner to determine the appropriateness of any other rejections based on this reference alone or in combination with other references.

Conclusion

In summary we have not sustained the rejection under 35 U.S.C. § 103 of claims 1-14.

We have entered a new grounds of rejection against claim 1 under 37 CFR § 41.50(b).

As indicated *supra*, this decision contains a new grounds of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, by final rule notice, 69 Fed. Reg 49960, 50008 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21, 61 (September 7, 2004)).

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37 CFR § 41.50(b) provides that, "[a] new grounds of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the Appellant, **WITHIN TWO MONTHS FROM THE DATE OF THE DECISION**, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings (37 CFR § 1.197 (b) (amended effective September 13, 2004)) as to the rejected claims:

- (1) Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner . . .
- (2) Request that the proceeding be reheard under 37 CFR § 41.52 by the Board upon the same record . . .

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED 37 CFR § 41.50 (b)

Lee E. Barnett

LEE E. BARRETT
Administrative Patent Judge

marshid Gadaf

MAHSHID SAADAT
Administrative Patent Judge

Albert MacDonald

ALLEN R. MACDONALD
Administrative Patent Judge

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